

the mortgagor. The policy was so issued in the name of the mortgagor, loss, if any, payable to the mortgagees, and subject to a mortgage clause. The premiums were paid by the mortgagor. A fire occurred and the insurance company paid the mortgagees the amount of the policy. The mortgagor claimed to have the mortgage discharged as being satisfied by the insurance money; the insurance company claimed that the mortgagor for certain reasons had forfeited any claim under the policy, that notwithstanding that no liability existed on its part to the mortgagor it had paid the insurance money to the mortgagees upon the condition that it should be subrogated to the rights of the mortgagees as provided by the mortgage clause, and that it was entitled to an assignment of the mortgage. It was held that as the insurance company had failed to shew any good defence as against the mortgagor, it was not entitled to repayment of the money or to be subrogated to the rights of the mortgagee, and that the insurance effected by the mortgagee, was effected for the benefit of the mortgagor, the payment consequently enuring to the benefit of the latter (f). In other words, the insurance company's right of subrogation depends upon the validity of its defence as against the mortgagor.

An insurer entitled to subrogation may recover from the assured not only the amount of any compensation or the value of any benefit received by the assured in excess of his actual loss, but also the full value of any rights or remedies against third persons which have been renounced by the assured and to which, but for such renunciation, the insurer would have been entitled to be subrogated (g).

The mortgage clause does not effect a new insurance in favour of the mortgagee. The insurer thereby agrees with the mortgagee that to the extent of his interest the insurance will not be invalidated by future act or negligence of the mortgagor, but the insurer is not debarred from setting up that the insurance was procured by fraud and therefore void *ab initio* (h).

It has been said that the mortgage clause constitutes a contract between the insurance company and the mortgagee, and that consequently the mortgagee's right to sue upon the policy without joining the mortgagor does not rest solely upon the clause providing that the loss, if any, shall be payable to the mortgagee as his interest may appear (i). The case in which this opinion was expressed was reversed on appeal on the ground that in any event the mortgage clause did not protect the mortgagee against the consequence of misstatements made by the mortgagor in the application for the insurance. Such misstatements rendered the original insurance void, and a subsequent renewal by way of renewal receipt was likewise a nullity (j).

5. Insurance in the name of the mortgagee.

A mortgagee, unpaid vendor or other person having a limited interest in

(f) *Bull v. North British Canadian Investment Co.*, 1888, 15 A.R. (Ont.) 421, affirmed, 1889, 18 Can. S.C.R. 697, Cameron, S.C. Cas. 1. In the Supreme Court of Canada Taschereau and Gwynne, JJ., expressed the opinion, that the interest of the mortgagees was the same as if they were assignees of a policy effected with the mortgagor.

(g) *West of England Fire Insurance Co. v. Iago*, [1897] 1 Q.B. 226.

(h) *Omnium Securities Co. v. Canada Fire and Marine Insurance Co.*, 1882, 1 O.R. 494.

(i) *Agricultural Savings and Loan Co. v. Liverpool & London Insurance Co.*, 1901, 3 O.L.R. 127, at p. 141. See § 3 *supra*, as to the effect of the last mentioned clause.

(j) *Liverpool and London and Globe Insurance Co. v. Agricultural, etc., Co.*, 1903, 33 Can. S.C.R. 94.